IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Writ Petition No.2292 of 2007

Dr. K.S. Jawatkar,
Professor of International Politics,
(Originally of Khambit, Tah. Ashti),
Flat No.47, DDA Flats, Sector XI,
Pocket 1, Phase 1, Dwarka,
New Delhi – 110 075. ...Petitioner

Versus

1. State of Maharashtra,
   through its Secretary,
   Ministry of Revenue,
   Sachivalay,
   Mumbai 400 001.

2. The Additional Collector (M.Z. Hikare),
   District Wardha,
   Wardha 442 101 (Maharashtra).

3. Smt. Durga w/o Bhikaji Mahaturkar,
   Village Khambit,
   Tahsil Ashti 442 202,
   District Wardha (Maharashtra).

4. The Revenue Inspector (Shri Nakhale),
   Service to be effected through
   The Tahsildar, Ashti,
   Tahsil Ashti 442 202,
   District Wardha (Maharashtra).

5. The Patwari (Suresh Tamhaskar),
   Circle No.4, Tahsil Office, Ashti,
   Service to be effected through
   The Tahsildar, Ashti,
   Tahsil Ashti 442 202,
   District Wardha (Maharashtra). ...Respondents

Petitioner in person.

Coram : A.H. Joshi & R.C. Chavan, J.

Date of Reserving the order : 24-7-2007.

Date of Pronouncing the order : 6 -8-2007.

Order (Per R.C. Chavan, J.) :

1. The petitioner seeks to have the order passed by the Additional Collector, Wardha, on 20-10-2006, in Revenue Appeal No.7/RTS-64/05-06, quashed, and a direction to the Additional Collector to effect mutation in

respect of field survey No.139/1 in favour of the petitioner and one Laxman Jawatkar in terms of the final order passed by the Sub Divisional Officer, Arvi, on 22-6-1994. The petitioner also seeks a direction to the Additional Collector to initiate action against the Revenue Inspector and Patwari for delaying the mutation in question, in accordance with law.

2. The petitioner had earlier filed Writ Petition No.1069 of 2007, which he was allowed to withdraw with liberty to file a fresh petition, since what was impugned in the said petition was a mere communication and the petitioner had not secured a copy of the order, which he wanted to challenge. The petitioner has now filed this petition along with the copy of the order dated 20-10-2006 passed by the Additional Collector on the order sheet itself.

3. Though the petitioner could have usefully availed of the services of a person proficient in the practice of law, he chose to file the petition without the aid of a lawyer and argued the matter himself.

4. Respondent No.3 Durga Mahaturkar is petitioner's sister. Durga Mahaturkar produced a will executed by her father and got a mutation of the property effected in her name. According to the petitioner, his father was not in a position to make and execute a will at the relevant time. When mutation was to be effected, the petitioner seems to have approached the

Sub Divisional Officer, Arvi, against the order passed by the Tahsildar, Ashti, in favour of respondent No.3 Durga Mahaturkar's claim for mutation. The Sub Divisional Officer had stayed the proceedings. During the pendency of the appeal before the Sub Divisional Officer, Durga Mahaturkar filed an "affidavit" dated 9-7-1993 stating that she had withdrawn from the benefits of will dated 29-5-1991 and that she was not claiming any share in the property of her late father on the basis of the said will. By the said affidavit, she also stated that she would have no objection if the field is mutated in the name of her brothers – the petitioner and Laxman.

5. The Sub Divisional Officer, however, rejected the petitioner's appeal by order dated 30-8-1993 holding that the so-called affidavit of respondent No.3 Durga Mahaturkar dated 9-7-1992 was not affirmed by Durga before any Magistrate or Notary. Copy of this affidavit, which is at Annexure P-6, does indeed show that it was not affirmed before any Magistrate.

6. The petitioner sought review of the order contending that when respondent No.3 Durga Mahaturkar herself had filed such a document, it was immaterial whether or not it was affirmed before a Notary Public or a Magistrate. During the pendency of the review application, respondent No.3 Durga Mahaturkar filed another application dated 17-1-1994 re-affirming that she had filed the affidavit dated 9-7-1993 in the Court and that she was

filing a fresh affidavit duly affirmed to the same effect. Copy of this application and the affidavit are at Annexures P-8 and P-9. Upon this, the Sub Divisional Officer, by his order dated 22-6-1994, held that since respondent No.3 Durga Mahaturkar had withdrawn her claim, there would be no objection to recording mutation in the name of the petitioner and Laxman, but added that before taking an entry of mutation, the Tahsildar should issue notices to the parties and hear them to ensure that there are no objections from anyone.

7. The petitioner believes that because of this order, his name was required to be mutated in the record of the property. He, therefore, wrote to the Collector, who, in turn, directed the Tahsildar to do the needful. The Tahsildar seems to have passed over the responsibility to the Revenue Inspector. The petitioner continued to write to the Collector and other officers in the Revenue Department for compliance of the order passed by the Sub Divisional Officer, Arvi, on 22-6-1994. The Sub Divisional Officer decided the matter finally by his order dated 22-11-2005. He held that respondent No.3 Durga Mahaturkar had objected to the mutation when, in pursuance of the order dated 22-6-1994, the mutation proceedings had been initiated. Respondent No.3 denied that she had given up her claim. The Sub Divisional Officer, therefore, rejected the petitioner's application. The petitioner approached the Additional Collector. The Additional Collector's order, which has been annexed at Annexure P-18,

shows that respondent No.3 Durga Mahaturkar had specifically objected to the mutation in favour of the petitioner and in view of this, the remedy, if any, of the petitioner lay before the competent Civil Court.

8. The petitioner should have realised that when his sister had an objection to mutation in his name, and when his sister did not, in express terms, agree not to press the will in her favour, the revenue authorities could not have passed any further orders. Had respondent No.3 indeed withdrawn her claim based on the will, she would have undoubtedly stated so before the revenue authorities when the mutation proceedings were re-commenced in pursuance of the order of the Sub Divisional Officer dated 22-6-1994. It is unfortunate that the petitioner has not grasped the import of the order passed by the Sub Divisional Officer on 22-6-1994, which is to the effect that the officer effecting mutations would issue notices to the parties, hear them, consider objections and then pass appropriate orders. It was not that the Sub Divisional Officer had directed mutation to be effected in the name of the petitioner without any further enquiry and since further enquiry revealed that respondent No.3 Durga Mahaturkar stood her ground as regards her claim to the property in question, the revenue authorities cannot be faulted in rejecting the petitioner's prayer.

9. The petitioner drew our attention to the judgments in Chandra Shashi v. Anil Kumar Verma, reported at (1995) 1 SCC 421, and Afzal and

another v. State of Haryana and others, reported at (1996) 7 SCC 397, which are about a person making a false statement in a judicial proceeding. We are afraid that these judgments do not help the petitioner, since the question as to whether the statement was true or false, will have to be decided upon an enquiry by a Court before which such statement was made.

10. In view of this, we are constrained to observe that the entire petition is misconceived and, therefore, the prayers made in the petition cannot be granted.

11. The petition is consequently dismissed.

Judge. Judge.

PDL/-